

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number: _____

Meeting Type: Regular

Meeting Date: Apr 24, 2014

Action Requested By: Legal

Agenda Type: Resolution

Subject Matter:

Real Estate Contract

Exact Wording for the Agenda:

Resolution authorizing the Mayor to execute a Real Estate Contract between the City of Huntsville and Attitude, LLC.

Note: If amendment, Please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what council action will provide, allow and accomplish and; any other information that might be helpful.

Associated Cost: _____

Budgeted Item: Not Applicable

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: _____

Date: _____

RESOLUTION NO. 14- _____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama that the Mayor be and he is hereby authorized to enter into a real estate sales contract by and between the City of Huntsville, a municipal corporation in the State of Alabama, and Attitude, LLC, which said agreement is substantially in words and figures as that certain document attached hereto and identified as "Real Estate Sales Contract between the City of Huntsville and Attitude, LLC," consisting of seven (7) pages including Exhibit "A" and the date of April 24, 2014, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 24th day of April, 2014.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 24th day of April, 2014.

Mayor of the City of Huntsville,
Alabama

REAL ESTATE AGREEMENT

This Real Estate Agreement (this "Agreement") is entered into by and between **THE CITY OF HUNTSVILLE**, an Alabama municipal corporation (hereinafter referred to as either "Purchaser" or the "City") who agrees to purchase the real property described in Paragraph One (1) from **ATTITUDE, LLC**, an Alabama limited liability company (hereinafter referred to as "Seller"), who agrees to sell the Property. In consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt of such by Seller is hereby acknowledged, the parties hereby agree as follows:

1. **Sale and Purchase**

Seller hereby agrees to grant, bargain, sell and convey to Purchaser that certain real property lying and being situated in Madison County, Alabama, and being described as 1.62 acres taken evenly off the East side of the 4.00 acre parcel described as the Proposed Tract 1 and depicted in the attached **Exhibit A** (hereinafter referred to as "the Property").

2. **Purchase Price**

The Purchase Price for the Property shall be Eight Hundred Fifty Thousand and No/100 Dollars (\$850,000.00), which shall be payable at Closing.

3. **Conditions of Sale**

This Agreement is subject to approval by the Huntsville City Council. Furthermore, this Agreement is subject to Purchaser's written approval of an owner's title commitment from Wilmer & Lee, P.A.

4. **Title**

The Property shall be conveyed to Purchaser by General Warranty Deed, in a form and content satisfactory to Purchaser and in accordance with the laws of the State of Alabama, conveying the Property, free and clear of all liens, encumbrances and other matters affecting title except a lien for taxes not yet due and payable, matters of survey, and existing easements and restrictions of record. Any existing mortgages on the Property shall be paid and/or satisfied at or prior to Closing. Seller shall provide customary affidavits in order to establish clear title to the Property.

5. Option.

a) For and in consideration of ten dollars and other good and valuable consideration in hand paid to the Seller, the receipt and sufficiency of which is hereby acknowledged by Seller, Seller hereby grants to the City an exclusive right and option (the "Option") to purchase the remaining 2.38 acres of the 4.00 acre parcel described as the Proposed Tract 1 in the attached **Exhibit A**, which is located due west of the Property described above (the "Option Property"), at the purchase price and on the terms and conditions hereinafter set forth.

b) **Purchase Price.** The purchase price for the Option Property shall be One Million Two Hundred Fifty Thousand and no/100 Dollars (\$1,250,000.00) (the "Option Purchase Price"). The Option Purchase Price shall be paid to Seller in cash upon the delivery of the deed to the Option Property to the City and/or its assignee (either being the "Purchaser") and satisfaction of all other closing conditions set forth in this Agreement.

c) **Option term.** The term of the Option herein granted is for an initial period of 180 days commencing on the date this Agreement is fully executed (the "Execution Date") and expiring at midnight 180 days after the Execution Date (the "Initial Term"); provided that Purchaser may extend the term of the Option for an additional period of 90 days (being a total of 270 days after the Execution Date)(the "First Option Extension"), by notice to Seller and payment of the additional sum of \$10.00, prior to expiration of the Initial Term. If the Option is not exercised in writing prior to the expiration of the Initial Term or, if applicable, the First Option Extension, this Option shall automatically and without notice expire and the consideration paid therefore shall be retained by Seller, and neither party shall have any further liability or obligation hereunder.

d) **Exercise of Option:** Notice of election of Purchaser to exercise this Option shall be delivered to Seller in Person or mailed to Seller by certified United States mail, postage prepaid, addressed to Seller at its registered office as established by the records of the Alabama Secretary of State, and the same shall be deemed to have been received on the day it is delivered.

e) **Title; Deed.** It is understood and agreed that the title herein required to be furnished at closing of the Option Property is the same as set forth above for the Property. The Option Property shall be conveyed by general warranty deed, free and clear of any and all liens, except the exceptions permitted in section 4 (the "Permitted Exceptions").

f) **No Obligation to Purchase.** Nothing in this Agreement is intended or shall operate to require Purchaser to purchase the Option Property.

g) **Closing.** The deed to the Option Property shall be delivered, and the sale closed, at the office of Wilmer & Lee, P.A., within thirty (30) days after the exercise of the Option (the "Closing Date"), provided that if exceptions appear, other than the Permitted Exceptions, and title is not acceptable to Purchaser at that time the sale shall be closed within three (3) days after the title is acceptable to Purchaser.

6. **Initial Closing**

The Initial Closing shall take place at Wilmer & Lee, P.A., on or before April 28, 2014. The Parties further agree as follows:

- a. Real Property Taxes for the current year, if any, shall be paid by Seller when due.
- b. Seller shall deliver an affidavit attesting that there are no liens and that Seller is in sole possession of the Property.
- c. Purchaser shall pay all costs of Closing. Each party shall pay its own attorney's fees in connection with Closing.
- d. Seller shall provide the above-referenced deed at Closing, to be prepared by Purchaser's counsel, at Purchaser's expense.

7. **Broker**

Seller and Purchaser acknowledge that no broker and/or finder arranged the sale of Seller's property on the terms and conditions contained herein. Seller and Purchaser do hereby agree to indemnify each other from all loss, damage, cost or expense, including attorney's fees, that they may suffer as a result of any claim or action brought by any other broker, acting on behalf of Seller or Purchaser, respectively.

8. **Time of the Essence**

Time is of the essence of this Agreement.

9. **Attorney's Fees**

In the event of a dispute between the parties pursuant to the terms of this Agreement, the prevailing party shall be entitled to collect reasonable attorney's fees.

10. Successors

All rights and obligations of Seller and Purchaser under this Agreement shall inure to the benefit of and be binding upon their successors and assigns.

11. Amendment

No modification or amendment of this Agreement shall be of any force or effect unless the same shall be made in writing and executed by each party hereto. To the extent that escrow, closing, or settlement instructions and/or documents are inconsistent with the terms and conditions of this Agreement, this Agreement shall control and shall further survive recordation of the deed.

12. Entire Agreement

This Agreement contains the entire agreement between the parties. No promise, representation, warranty or covenant not included in this Agreement has been relied upon by either party. Each party has had a full opportunity to examine this Agreement and/or has had an opportunity to have its counsel review said Agreement on its behalf.

13. Interpretation

This Agreement shall be interpreted in accordance with Alabama law. Unless otherwise provided, all terms shall have the meaning given them in ordinary and customary English usage. Words in the masculine gender include feminine and neuter. The paragraph headings and titles of this Agreement do not form a part of this Agreement, are inserted for convenience of reference only, and shall have no effect upon the construction or interpretation of any part of this Agreement.

14. Email or Facsimile Signatures

The parties agree that this document may be executed and the signatures transmitted to the other parties by facsimile, email or similar electronic transmission. Upon transmission and receipt by another party, such signature shall be effective as an original. Notwithstanding the preceding sentence, the parties agree that they will transmit original signature pages to the other parties and Counsel promptly after execution.

15. Execution by Counterpart Originals.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

16. Resubdivision. It is Purchaser's responsibility to do all necessary engineering work and to pay all costs for causing both the Property described and depicted on the attached Exhibit "A" and the Option Property described and depicted in attached Exhibit "A" to be resubdivided as may be required.

17. Counsel Acknowledgment

The parties all acknowledge that Purchaser's counsel, SAMUEL H. GIVHAN, and the law firm of Wilmer & Lee, P.A. (collectively "Counsel") prepared this Agreement on behalf of and in the course of his representation of Purchaser. All conflicts of interest due to Counsel's representation of Purchaser and unrelated representation of Seller, if any, are hereby waived.

[SIGNATURES ON FOLLOWING PAGE(S)]

IN WITNESS WHEREOF, the parties have caused this Real Estate Agreement to be executed on the respective dates set forth below.

PURCHASER:

The City of Huntsville, Alabama

By: _____
Tommy Battle, Mayor

Attest: _____
Charles Hagood, Clerk Treasurer

Date: _____

SELLER:

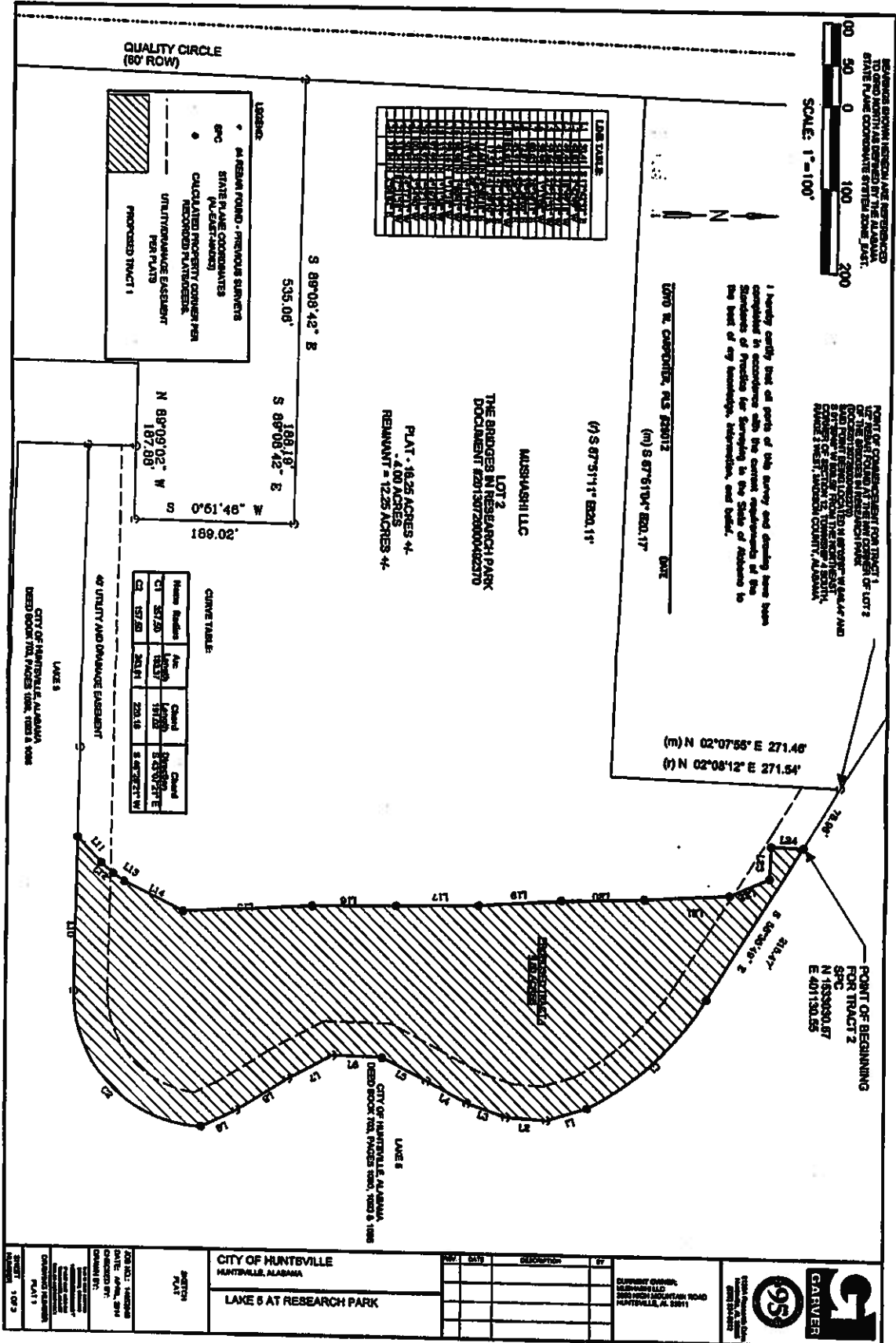
Attitude, LLC

By: _____
James Packard
Its: Manager

Witness

Date: _____

P:\CITY\CONTRACT\Attitude to City.doc



ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: Legal

Council Meeting Date: 4/24/2014

Department Contact: Peter Joffrion

Phone # 427-5026

Contract or Agreement: Real Estate Agreement with Attitude, LLC

Document Name: Real Estate Contract between the COH and Attitude, LLC

City Obligation Amount: _____

Total Project Budget: _____

Uncommitted Account Balance: _____

Account Number: _____

Procurement Agreements

<u>Not Applicable</u>	<u>Not Applicable</u>
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Grant-Funded Agreements

<u>Not Applicable</u>	Grant Name: _____
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Department	Signature	Date
1) Originating		
2) Legal		
3) Finance		
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		